

Attorney for the Securities Department

(collectively referred to as “Respondents”) for violating the Securities Act of Montana (“Act”). The Commissioner has authority to take such action under the provisions of Mont. Code Ann. §§ 30-10-102, 30-10-107, 30-10-301, 30-10-304, 30-10-305, 30-10-307, 30-10-309, 30-10-324, 30-10-325, and 30-10-326. Specifically, the Department is proposing that the Commissioner impose appropriate fines, appropriate restitution with interest, and permanently prohibit the Respondents from violating the Act.

Service of process is pursuant to Mont. Code Ann. § 30-10-107(8).

### **REASONS FOR ACTION**

There is probable cause to believe that the following facts, if true, justify and support such specific action.

### **ALLEGATIONS OF FACT**

1. Respondent Fortune Hi-Tech Marketing, Inc. (FHTM) is a Kentucky corporation with a principal place of business located at 880 Corporate Drive, Suite 300, Lexington, KY 40503, currently doing business in Montana.
2. Respondent Paul C. Orberson (Respondent Orberson) is the President and Director of FHTM.
3. Respondent Thomas A. Mills (Respondent Mills) is the Vice-president and Chief Executive Officer of FHTM.
4. Respondent Dianne Graber (Respondent Graber) is a self-described “executive manager” of FHTM from Billings, Montana, who has earned at least \$65,458.19 through December 31, 2008, by participating in FHTM’s program.
5. Respondents John and Jane Does 1-2500 will be named if and when the Department identifies them.

6. On December 22, 2000, FHTM filed Form MLD-1 with the Department for notice filing purposes as an alleged multilevel distribution company.

7. In its filing, FHTM stated that the compensation structure of its company came from two sources: "Customer Generated Usage" and a "customer acquisition Quick Start Bonus." A "Quick Start Bonus Override" is offered for new managers who reach higher "levels" and managers can make additional bonuses by reaching certain "levels" and "groups."

8. According to FHTM policies and procedures, a prospective participant, after meeting certain criteria, enters the scheme as a Representative. After meeting other criteria, the participant can move to higher levels. Following Representative, the order of levels is as follows:

- a. Qualified Representative;
- b. Manager;
- c. Regional Sales Manager;
- d. Qualified Regional Sales Manager;
- e. Executive Sales Manager;
- f. Qualified Executive Sales Manager;
- g. National Sales Manager;
- h. Qualified National Sales Manager; and
- i. Presidential Ambassador.

See Exhibit A attached hereto.

9. After receiving multiple telephone inquiries from Montana consumers about FHTM, the Department initiated an investigation of FHTM on July 2, 2009, and over the course of approximately five months, obtained the following:

a. From July 2006 to June 2009, 1,560 Montanans participated in FHTM's program.

b. In a pre-recorded phone call in which the Department participated, Respondent Graber attempted to get the listeners on the call to participate in FHTM's program. Respondent Graber stated that FHTM's business model was based on the following:

(1) FHTM's founder, Respondent Orberson, partnered with several large companies including, but not limited to, Dish Network, Travelocity, General Electric, and The Home Depot to bring each company customers for the services or products offered by the company.

(2) Graber stated that the companies' "partnership with [FHTM] allows us as representatives to relationship market their products and services and collect a residual income on all the bills of all the people we bring to the company of customers, ourselves included."

(3) The FHTM representatives do not handle the billing, the customer service, or any of the equipment needs and the companies "pay you and I a royalty month after month in the form of a residual income."

(4) To get started with FHTM, a person must "invest a fully-deductible startup licensing fee of \$299 and become a customer...for three of [the] partnering companies."

(5) “From the third person on...each time you bring a new person to the business that enrolls as a manager and becomes a customer for three of [the] companies, [FHTM] will send you a \$100 bonus for finding them.”

(6) “With [FHTM’s] help, we’ll build a team of 12 managers and [FHTM] will then promote you to a very lucrative position called Regional Sales Manager...[which] is where the residuals and the bonuses trigger to unlimited levels.”

c. Additionally, in a recorded web video made by Mike Misenheimer (Misenheimer), a self-described “executive manager” of FHTM from Arkansas, Misenheimer described FHTM’s business model as follows:

(1) Misenheimer stated that “it’s a few hundred dollars to get started.”

(2) In explaining the concept, Misenheimer stated that “you don’t have to understand how it all works; what you’ve got to understand is that it does work.”

(3) Misenheimer stated that FHTM has “people knocking on [FHTM’s] door every day, multi-million dollar companies, wanting [FHTM] to market for them.” He named companies such as AT&T, Sprint, Alltel, Dish Network, and Lamas Beauty International, “a billion dollar company.”

(4) Misenheimer noted that FHTM’s compensation plan is “extremely generous” and “the reason [the companies] can pay [FHTM

participants] this kind of money is because we're a customer-gathering machine."

(5) Misenheimer argued that the business is simple because the participant does two simple things: "Number one, we gather a few loyal customers...Number two, we introduce this business to a few other people who do the same two things. They gather a few loyal customers and they teach other people how to do the same."

(6) Misenheimer stated that the "real way" to get wealthy is "building a team of people...You start sharing this opportunity with a few of your friends. And let's say that Steve sees what you see. Steve gets started in the business and he becomes a qualified rep by gathering three customer points. Three qualifying customer points and you get paid a commission every time he pays for those services, month after month after month. But that's not all. You also get paid a \$100 finder's fee, or quick start bonus...[FHTM] send[s] me \$100 for getting Steve, I'm going to go find me a Lisa, right? Lisa gets started and she becomes a qualified rep...you get paid an additional \$100. You can do it over and over again. Each qualified rep you get, guys, you do the math. It's 100 bucks a head."

(7) Misenheimer described that the first position a participant can meet is regional, which means the participant has built a team of 12 people. At this position, every time the participant gets a qualified representative, FHTM pays the participant \$200 a person.

(8) According to Misenheimer, if a participant hits the “President’s Pool, [the participant] will override the entire company...and if [the participant] meet[s] a few requirements, [the participant] can drive a free Lexus car.”

(9) Describing it as the “perfect business,” Misenheimer stated that “\$299 allows [the participant] to be a manager...[which] gives your training, your tools, your home office support, your accounting, your bookwork.”

(10) And for an extra \$299, Misenheimer stated that a participant can become a trainer and “then you make an extra \$40 every time you train a brand new manager on your team.”

d. In response to the Department’s requests, FHTM stated as follows:

(1) Contrary to Respondent Graber and Misenheimer’s statements, FHTM stated, “FHTM does not charge a fee for an individual to participate in FHTM’s multi-level distribution program.”

(2) FHTM also stated that “[n]o payments are made for recruitment or enrollment. All payments to [FHTM participants] are directly linked to the sale of products, not to the recruitment of new [participants].”

(3) According to FHTM, gross revenue from the sale of products and services to Montana FHTM participants from July 2006 through June 2009 was \$1,315,506. Of that amount, \$386,707 was from the sale of True Essentials and Lamas Beauty products.

(4) During the same period, FHTM received \$553,153 from 1,295 of the Montana participants.

e. The Department also sent a questionnaire to a number of randomly selected Montana-based FHTM managers. The Department received 17 responses to the following:

(1) Department Question: *If you recruit new participants, do you receive compensation?* Responses: Of the 17 responses, 15 said yes; one said he did not receive any compensation for new participants; and one called the participants “customers.”

(2) Department Question: *How do you earn money with FHTM?* Responses: Of the 17 responses, seven answered by saying signing up new members; four said signing up new members and selling products; one said he did not make any money because he did not recruit other members; one said gathering customers; one said using services and helping others transfer services; one said rebates and that he has made \$2,000, and two had no response.

(3) Department Questions: *How much did you pay to get involved with FHTM and how much money have you earned with FHTM?* Responses are as follows:

Response # 1: Paid \$300 and has earned \$10

Response # 2: Paid \$299 and has earned \$190

Response # 3: Paid \$299 and has earned \$299

Response # 4: Paid \$299 and has earned \$0



Response # 5: Paid \$500 and has earned \$25

Response # 6: Paid \$299 and has earned \$600

Response # 7: Paid \$299 and has earned \$90

Response # 8: Paid \$800 and has earned \$100

Response # 9: Paid \$300 and has earned \$0

Response #10: Paid \$415 and has earned \$0

Response #11: Paid \$400 and has earned \$0

Response #12: Paid \$500 and has earned \$0

Response #13: Paid \$299 and unsure of earnings

Response #14: Paid \$299 and has earned \$200

Response #15: Paid \$300 and has earned \$0

Response #16: Paid \$299 and unsure of earnings

Response #17: Paid \$300 and has earned \$2,000

(4) Department Question: *Are you charged monthly fees...If so, how much are you charged and what are the fees for?* Responses: Of the 17 responses, four said they were not charged; two said they were charged for having a website, but did not say how much; three said they were charged \$19.95 for a website; one said \$25 for a website; one said \$20 to be a member; one said \$20, but "did not know what for,"; one said \$70; one said \$75; one said \$70 for customer points; one said she was charged \$49.95 for a "travel co." and \$419.95 for a "cosmetic co."; and one said yes, but could not remember how much he was charged per month.

(5) Department Question: *How much do you earn selling discounted services?* Responses: Of the 17 responses, nine said zero or marked a slash; one had no answer; one said “[t]he services that are provided by FHTM are not discounted.”; one said “vary’s [sic] according to services”; one said “a small percentage from other people’s bills...”; one said “.80 per dish contract and 1.00 per Alltel contract”; one said “percentages differ”; one said “1%-2%”; and one said “I don’t know.”

f. While FHTM states that “FHTM does not charge a fee for an individual to participate in its program,” phone conversations with inquirers, questionnaire responses, Respondent Graber’s recorded phone message, and Misenheimer’s online video presentation all show that a prospective participant must pay \$299 to participate in FHTM’s program.

g. Additionally, Respondent Graber represented in her recorded message that the \$299 is a “licensing fee,” but no license is issued or discussed in FHTM’s marketing materials.

h. On FHTM’s website, [www.researchfortune.com](http://www.researchfortune.com), Jim Miles (Miles), a former Secretary of State of South Carolina, was interviewed by Respondent Mills regarding FHTM. Miles, an FHTM participant, stated that prospective participants had to pay money to get involved with FHTM. Miles also stated the following:

(1) FHTM has “passed legal judgment by every state in this nation.” For Montana, this representation is false.

(2) FHTM “is a pyramid, there’s no doubt about that...There’s nothing wrong with a pyramid...It’s the way you manage things...[pyramids are] illegal if no products or services are being sold, [which is] not the case with [FHTM].”

(3) Dish Network, LLC, (Dish) is “not going to get involved with an illegitimate company,” which, according to Miles, is why Dish partnered with FHTM.

(4) FHTM “is a legitimate way to achieve the American Dream.”

i. The Department contacted Dish regarding the alleged partnership with FHTM. Dish advised the Department that FHTM “is not a partner of Dish,” but rather “a third-party independent contractor authorized to sell Dish Network service.” See Exhibit B attached hereto.

j. The Department contacted The Home Depot regarding the alleged partnership with FHTM. The Home Depot advised the Department that “The Home Depot do [sic] not have a partnership or sales agreement with [FHTM].” See Exhibit C attached hereto.

k. The Department contacted Travelocity regarding the alleged partnership with FHTM. Travelocity advised that Travelocity “is not a partner, in the legal sense, of [FHTM]. Rather, Travelocity has a contractual relationship with [FHTM]...which...provides online travel information and booking services functionality for various web sites established by [FHTM]...The provision of these technical solutions by Travelocity is unrelated to any multi-level marketing

activities that [FHTM] may be engaged in; what we do is akin to the phone company that provides telephones and telephone services to [FHTM].” See Exhibit D attached hereto.

l. The Department contacted GE Security, Inc., (GE) regarding the alleged partnership with FHTM. GE advised that “[FHTM] does not have a direct relationship with [GE]. We understand [FHTM] purchases GE Security products from Protect America. Protect America is a GE Security authorized dealer.” GE went on to thank the Department “for bringing the inappropriate use of the GE trademark to our attention.” See Exhibit E attached hereto.

m. The Department also received a letter from Vonda Rader (Rader), an FHTM participant from Columbus, Montana, who “paid [FHTM] \$484.95 total and not sure what I paid for.” Rader also stated that “[i]t appears to me [FHTM] just want[s] people to pay \$299.99 period.” See Exhibit F attached hereto.

n. During the course of its investigation, the Department found that an overwhelming portion of revenues earned by FHTM participants was derived from participants who must personally buy products in order to become managers or recruit new participants into the program.

o. The Department also found that the existing managers generate income for themselves by bringing on new participants (recruits) who then must also buy products in order to become managers.

p. The cost associated with becoming an FHTM participant is essential to paying other managers to bring on other new members with increases

in income being directly related to the number of managers brought on who must also spend money for their membership.

### **CONCLUSIONS OF LAW**

1. The Montana State Auditor is the Commissioner of Securities (“Commissioner”) pursuant to Mont. Code Ann. §§ 30-10-107 and 2-15-1903.
2. The Commissioner has jurisdiction over this matter pursuant to Mont. Code Ann. §§ 30-10-102, 30-10-107, 30-10-301, 30-10-304, 30-10-305, 30-10-307, 30-10-309, 30-10-324, 30-10-325, and 30-10-326.
3. The administration of the Securities Act of Montana, Mont. Code Ann. § 30-10-101, *et seq.*, is under the supervision and control of the Commissioner pursuant to Mont. Code Ann. § 30-10-107.
4. The Commissioner shall administer the Securities Department to protect investors pursuant to Mont. Code Ann. § 30-10-102.
5. Pursuant to Mont. Code Ann. § 30-10-324(3)(a)(i)-(iii), a “[m]ultilevel distribution company” means a person that sells, distributes, or supplies goods or services through independent agents, contractors, or distributors at different levels of distribution; may recruit other participants in the company; and is eligible for commissions, cross-commissions, override commissions, bonuses, refunds, dividends, or other consideration that is or may be paid as a result of the sale of goods or services or the recruitment of or the performance or actions of other participants.
6. Pursuant to Mont. Code Ann. § 30-10-324(4), a “[p]articipant” means a person involved in a sales plan or operation.”

7. Pursuant to Mont. Code Ann. § 30-10-324(5), a “[p]erson” means an individual, corporation, partnership, limited liability company, or other business entity.”

8. Pursuant to Mont. Code Ann. § 30-10-326(1), “[a] multilevel distribution company with a participant that is a resident of this state shall file with the securities commissioner on a form prescribed by the commissioner an annual notice of the company's operation in this state and an irrevocable consent designating the commissioner as its agent for service of process for any alleged violation of Mont. Code Ann. § 30-10-325.”

9. Pursuant to Mont. Code Ann. § 30-10-326(5), “[c]ompliance with [Title 30, Chapter 10] does not confer upon a multilevel distribution company any license or registration or signify that the state has sanctioned, approved, or endorsed a multilevel distribution company or its sales plan or operation.”

10. Pursuant to Mont. Code Ann. § 30-10-324(6)(a), a “[p]yramid promotional scheme” means a sales plan or operation in which a participant gives consideration for the opportunity to receive compensation derived primarily from obtaining the participation of other persons in the sales plan or operation rather than from the sale of goods or services by the participant or the other persons induced to participate in the sales plan or operation by the participant.” (Emphasis added.)

11. Pursuant to Mont. Code Ann. § 30-10-324(6)(c)(i)-(v), “[a] pyramid promotional scheme does not include a sales plan or operation that[,] subject to the provisions of [Mont. Code Ann. § 30-10-324(6)(c)(v)], provides compensation to a participant based primarily upon the sale of goods or services by the participant, including goods or services used or consumed by the participant, and not primarily for

obtaining the participation of other persons in the sales plan or operation and that provides compensation to the participant based upon the sale of goods or services by persons whose participation in the sales plan or operation has been obtained by the participant; does not require a participant to purchase goods or services in an amount that unreasonably exceeds an amount that can be expected to be resold or consumed within a reasonable period of time; is authorized to use a federally registered trademark or servicemark that identifies the company promoting the sales plan or operation, the goods or services sold, or the sales plan or operation; provides each person joining the sales plan or operation with a written agreement containing or a written statement describing the material terms of participating in the sales plan or operation, allows a person at least 15 days to cancel the person's participation in the sales plan or operation, and provides that if the person cancels participation within the time provided and returns any required items, the person is entitled to a refund of any consideration given to participate in the sales plan or operation; and upon the request of a participant deciding to terminate participation in the sales plan or operation, provides for the repurchase, at not less than 90% of the amount paid by the participant, of any currently marketable goods or services sold to the participant within 12 months of the request that have not been resold or consumed by the participant and if disclosed to the participant at the time of purchase, provides that goods or services are not considered currently marketable if the goods have been consumed or the services rendered or if the goods or services are seasonal, discontinued, or special promotional items. Sales plan or operation promotional materials, sales aids, and sales kits are subject to the provisions of [Mont. Code Ann. § 30-10-324(6)(c)(v)] if they are a

required purchase for the participant or if the participant has received or may receive a financial benefit from their purchase.”

12. Pursuant to Mont. Code Ann. § 30-10-325(1), “[a] person may not conduct or promote or cause to be conducted or promoted a pyramid promotional scheme.”

13. Pursuant to Mont. Code Ann. § 30-10-325(3), “[a] person who violates [Mont. Code Ann. § 30-10-325(1)] shall, for each participant giving consideration, be assessed a civil penalty in an administrative proceeding in an amount not to exceed \$10,000.

14. FHTM is not a multilevel distribution company, but rather a pyramid promotional scheme because the compensation each participant in the program receives is derived primarily from obtaining the participation of other persons in the program and not the sale of goods or services.

15. FHTM’s plan or operation is not exempt from Mont. Code Ann. § 30-10-324(6)(a) because it does not meet the requirements of Mont. Code Ann. § 30-10-324(6)(c)(i)-(v).

16. As a company which is promoting, conducting, or causing to be promoted or conducted a pyramid promotional scheme, FHTM is in violation of Mont. Code Ann. § 30-10-325(1).

17. As someone who is promoting, conducting, or causing to be promoted or conducted a pyramid promotional scheme, Respondent Orberson is in violation of Mont. Code Ann. § 30-10-325(1).



18. As someone who is promoting, conducting, or causing to be promoted or conducted a pyramid promotional scheme, Respondent Mills is in violation of Mont. Code Ann. § 30-10-325(1).

19. As someone who is promoting, conducting, or causing to be promoted or conducted a pyramid promotional scheme, Respondent Graber is in violation of Mont. Code Ann. § 30-10-325(1).

20. As someone who may be promoting, conducting, or causing to be promoted or conducted a pyramid promotional scheme, Respondents John and Jane Does 1-2500 may be in violation of Mont. Code Ann. § 30-10-325(1).

#### **RELIEF SOUGHT**

1. Pursuant to Mont. Code Ann. § 30-10-309(1), order all Respondents to pay restitution to the victims in this case including 10% interest from the date of the wrong-doing.

2. Pursuant to Mont. Code Ann. § 30-10-325(3), order all Respondents to pay fines not to exceed \$10,000 for each participant giving consideration in the pyramid promotional scheme, in violation of Mont. Code Ann. § 30-10-324(6)(a).

3. Pursuant to Mont. Code Ann. § 30-10-305, order all Respondents to cease and desist from continuing to violate the Act.

4. Any other such relief allowed by law or required by justice.

#### **PUBLIC INTEREST**

For any and all of the reasons set forth above, it is in the public interest and will protect Montana investors to:

1. Order all Respondents to pay administrative fines in an amount and upon such terms and conditions as supported by the evidence and determined at a hearing of this matter;

2. Order all Respondents to pay restitution to the Montana participants in an amount and upon such terms and conditions, including the statutory 10% per annum interest, on the losses the participants incurred as supported by the evidence and determined at a hearing of this matter;

3. Order all Respondents to cease and desist from continuing to violate the Act; and

4. Take such other actions which may be in the public interest and just and proper for the protection of Montanans.

#### **STATEMENT OF RIGHTS**

You, FORTUNE HI-TECH MARKETING, INC., a Kentucky corporation doing business in Montana; PAUL C. ORBERSON, individually and as president of FHTM; THOMAS A. MILLS, individually and as vice-president and Chief Executive Officer of FHTM; DIANNE GRABER, individually; and JOHN and JANE DOES 1-2500, are entitled to a hearing and to respond to this Notice of Proposed Agency Action and to present evidence and arguments on all issues involved in this case. You may have a formal hearing before a hearing examiner appointed by the Commissioner as provided in the Montana Administrative Procedure Act. Mont. Code Ann. § 2-4-601, *et seq.*

You have a right to be represented by an attorney at any and all stages of this proceeding. If you wish to contest the allegations herein, you must make a written request for a hearing within 15 days of receipt of this notice to Jesse Laslovich, Chief

Legal Counsel, Office of the Commissioner of Securities & Insurance, Montana State Auditor's Office, 840 Helena Avenue, Helena, MT 59601. The hearing shall then be held within 45 days of the Commissioner's receipt of the hearing request, unless the time is extended by agreement of the parties. While so advising Mr. Laslovich, your written notice must clearly indicate whether you request a hearing, or whether you waive formal proceedings and, if so, what informal proceedings you prefer for handling this case. Pursuant to Mont. Code Ann. § 2-4-603(2), you may not request to proceed informally if the action could result in suspension, revocation, or any other adverse action against a professional license. If you request a hearing, you will be given notice of the date, time, and place of the hearing.

Should you request a hearing, you have the right to be accompanied, represented, and advised by an attorney. If the attorney you choose has not been admitted to the practice of law in the state of Montana, she or he must comply with the Montana State Bar requirements for appearing *pro hac vice* and Montana case law. *Application of American Smelting and Refining, Co.*, 164 Mont. 139, 520 P.2d 103 (1973) and *Mont. Supreme Court Comm'n on the Unauthorized Practice of Law v. O'Neil*, 2006 MT 284, 334 Mont. 311, 147 P.3d 200 (2006).

#### **CONTACT WITH THE COMMISSIONER'S OFFICE**

If you have questions or wish to discuss this matter, please contact Jesse Laslovich, Chief Legal Counsel, Office of the Commissioner of Securities and Insurance, 840 Helena Ave, Helena, MT, 59601, (406) 444-2040. If you are represented by an attorney, please make any contacts with this office through your attorney.

### **POSSIBILITY OF DEFAULT**

Failure to give written notice of your demand for a formal hearing or for informal procedure within 15 days will result in the entry of a default order imposing any sanctions available under Montana law without any additional notice to you, pursuant to Mont. Admin. R. §§ 6.6.101, 1.3.214, and the Attorney General's Model Rule 10.

DATED this 4th day of March, 2010.

  
JESSE LASLOVICH  
Chief Legal Counsel

### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this 4th day of March, 2010, a true and correct copy of the foregoing Notice of Proposed Agency Action and Opportunity for Hearing was served upon the following by certified mail, with postage prepaid and return receipt requested:

FORTUNE HI-TECH MARKETING  
880 Corporate Drive, Suite 300  
Lexington, KY 40503

PAUL C. ORBERSON  
880 Corporate Drive, Suite 300  
Lexington, KY 40503

THOMAS A. MILLS  
880 Corporate Drive, Suite 300  
Lexington, KY 40503

DIANNE GRABER  
5585 Chief Brave Wolf Road  
Laurel, MT 59044

  
Susan Paulson-Davis

20

*In the Matter of the Proposed Agency Action Regarding FORTUNE HI-TECH MARKETING, INC., PAUL C. ORBERSON, THOMAS A. MILLS, DIANNE GRABER, and JOHN and JANE DOES 1-2500*

# EXHIBIT A

### 3. FHTM SALES FORCE

All FHTM enrollees are known as Independent Representatives (IRs). They are independent contractors building their own businesses. They market FHTM products and services and sponsor like-minded people who would like to do the same. IRs receive commissions and bonuses based upon customers that purchase and use FHTM's products and services. The amount of success that you will enjoy is often related to the time and effort that you dedicate to working your business. Work with your sponsor and upline and follow our Quick Start Business Plan.

- A. Representative:** The Representative position attracts those individuals who are primarily interested in marketing products and services and receiving monthly residual income commissions. This position requires a \$75.00 refundable application deposit, except where prohibited by law (see current Form #100.) Since Representatives do not purchase the Optional Special Services Program they must pay for all services (i.e. downline print outs, newsletter subscription, home office support, etc.) they may desire which will be provided to them upon receipt of their written request. A Representative cannot attend Manager training which is provided as a part of the Optional Special Services Program. Representatives are provided with a free Starter Kit and the Policies and Procedures at the time of enrollment. A Representative receives the same Compensation Plan commissions/bonuses and is subject to the same policies and advancement requirements as a Manager.
- B. Manager:** The MANAGER position is an IR that has purchased the Optional Special Services Program which includes additional sales materials, manuals, special training, home office support, monthly downline reports upon request (via internet or in printed form), etc. **The annual renewal fee for the Optional Special Services Program is \$199.00. A Manager may cancel the Optional Special Services Program and request a refund, in writing, within ten (10) calendar days from the date of purchase. See Section 11.4 of Policies and Procedures.**
- C. Independent Representative (IR):** The Company considers all Representatives and Managers to be "Independent Representatives."

### 4. FHTM FIELD LEADERSHIP

- A. Qualified Representative (QR):** A Qualified Representative (QR) is an IR that has qualified for all commission levels in the eight (8) level compensation program. Requirements are: (i) The IR must have ten (10) or more active personal customers; and (ii) the IR must have a minimum of three (3) personally sponsored first level Managers.

QRs will remain eligible for CGU commissions through all eight (8) levels by maintaining ten (10) or more active personal customers on a monthly basis.

- B. Regional Sales Manager (RSM) / Qualified Regional Sales Manager (QRSM):** A Qualified Representative can be promoted to Regional Sales Manager (RSM) by meeting all of the following requirements: (i) develop a minimum downline organization of

twelve (12) Managers within his or her first five (5) levels; (ii) have ten (10) or more active personal customers; and (iii) be approved by FHTM. The QR cannot count itself as one (1) of the required twelve (12) Managers. RSMs are responsible for managing downline organizations, coordinating local events and communications, developing areas and providing assistance to all IRs.

An RSM must maintain ten (10) or more active personal customers as of the last day of the month in order to be a **Qualified Regional Sales Manager (QRSM)** and thereby be eligible to receive any monthly management customer acquisition bonuses payable for that month from his/her RSM coded group. An active QRSM is eligible to receive a monthly management customer acquisition bonus of \$100.00 for each new Manager entering his/her RSM coded group when the newly sponsored Manager meets

the requirements necessary for the payment of a Quick Start Bonus (QSB) to his/her sponsor. In addition to this bonus the QRSM earns a 1/4% override commission on CGU of the customers in his/her RSM coded group.

QRSMs that gather and maintain five (5) True Essentials customers will receive an additional \$25 RSM Customer Acquisition Bonus (CAB) when the newly-sponsored IR gather two (2) new TE customers within the 60-day Quick Start time period, provided they are eligible for basic CAB (section 8A). At least four (4) of the ten (10) required customers must be customers other than the QRSM's personal accounts (i.e., outside of the household) in order to qualify for the additional CAB.

A QRSM that develops a QRSM in his/her coded RSM group becomes qualified for a "first generation break away" coded customer acquisition bonus of \$50.00 and a 1/4% override commission on the CGU of the customers for each new Manager that the new QRSM develops (and for whom a QSB is paid) in his/her new RSM coded group.

When the "First Generation QRSM" develops a QRSM in his/her coded RSM group and thereby becomes eligible for his/her own separate "first generation break away" coded customer acquisition bonus, then a "second generation break away" coded customer acquisition bonus of \$10.00 will be paid to the "Grandparent QRSM" for each new Manager that the "second generation QRSM" develops (and for whom a QSB is paid) in his/her new RSM coded group.

**C. Executive Sales Manager (ESM) / Qualified Executive Sales Manager (QESM):** A Qualified Regional Sales Manager can be promoted to Executive Sales Manager (ESM) by meeting all of the following requirements: (i) have fifteen (15) or more active personal customers; (ii) develop six (6) QRSMs on any level of his/her personal RSM coded group, however, these six (6) QRSMs must be developed in two (2) or more separate legs of the RSM coded group; (iii) develop a minimum downline organization of ninety (90) Managers in his/her RSM coded group; and (iv) be approved by FHTM.

An ESM must maintain fifteen (15) or more active personal customers as of the last day of the month in order to be a Qualified Executive Sales Manager (QESM) and to be eligible to receive any monthly management customer acquisition bonuses payable for that month from his/her ESM coded group. An active QESM is eligible to receive a monthly management customer acquisition

bonus of \$60.00 for each new Manager entering his/her ESM coded group when the newly sponsored Manager meets the requirements necessary for the payment of a Quick Start Bonus (QSB) to his/her sponsor. In addition to this bonus the QESM earns a 1/4% override commission on CGU of the customers in his/her ESM coded group.

A QESM that develops a QESM in his/her coded ESM group becomes qualified for a "first generation break away" coded customer acquisition bonus of \$20.00 and a 1/4% override commission on the CGU of the customers for each new Manager that the new QESM develops (and for whom a QSB is paid) in his/her new ESM coded group.

When the "First Generation QESM" develops a QESM in his/her coded ESM group and thereby becomes eligible for his/her own separate "first generation break away" coded customer acquisition bonus, then a "second generation break away" coded customer acquisition bonus of \$10.00 will be paid to the "Grandparent QESM" for each new Manager that the "second generation QESM" develops (and for whom a QSB is paid) in his/her new ESM coded group.

QESMs that gather and maintain five (5) True Essentials customers will receive an additional \$10 ESM Customer Acquisition Bonus (CAB) provided they are eligible for the basic CAB (section 8A) when two (2) TE customers are gathered by a new IR. At least four (4) of the fifteen (15) required customers must be customers other than the QESM's personal accounts (i.e., outside of the household) in order to qualify for the additional CAB.

**D. National Sales Manager (NSM):** A Qualified Executive Sales Manager can be promoted to National Sales Manager (NSM) by meeting all of the following requirements: (i) maintain fifteen (15) or more active personal customers; (ii) develop six (6) QESMs on any level of his/her personal ESM coded group, however, these six (6) QESMs must be developed in two (2) or more separate legs of the ESM coded group; (iii) have developed a minimum downline organization of ninety (90) Managers in RSM coded group; (iv) develop a minimum downline organization of five hundred and forty (540) Managers in his/her ESM coded group; and (v) be approved by FHTM.

An NSM must maintain fifteen (15) or more active personal customers as of the last day of the month in order to be a **Qualified National Sales Manager (QNSM)** and to be eligible to receive any monthly management customer acquisition bonuses payable for that month from his/her NSM coded group. An active QNSM is eligible to receive a monthly management customer acquisition

bonus of \$30.00 for each new Manager entering his/her NSM coded group when the newly sponsored Manager meets the requirements necessary for the payment of a Quick Start Bonus (QSB) to his/her sponsor. In addition to this bonus the QNSM earns a 1/2% override commission on CGU of the customers in his/her NSM coded group.

A QNSM that develops a QNSM in his/her coded NSM group becomes qualified for a "first generation break away" coded customer acquisition bonus of \$10.00 and a 1/4% override commission on the CGU of the customers for each new Manager that the new QNSM develops (and for whom a QSB is paid) in his/her new NSM coded group.

When the "First Generation QNSM" develops a QNSM in his/her coded NSM group and thereby becomes eligible for his/her own separate "first generation break away" coded customer acquisition bonus, then a "second generation break away" coded customer acquisition bonus of \$5.00 will be paid to the "Grandparent QNSM" for each new Manager that the "second generation QNSM" develops (and for whom a QSB is paid) in his/her new NSM coded group.

**E. Presidential Ambassadors:** Presidential Ambassadors will be determined as a portion of the Customer Generated Usage. You must meet the following requirements to be eligible: (i) You must have met all requirements for becoming a Qualified National Sales Manager; (ii) develop three (3) QNSMs on any level of your personal NSM coded organization, however, these three (3) QNSMs must be developed in two (2) or more separate legs of the NSM coded group; (iii) develop a minimum downline organization of one thousand six hundred and twenty (1620) Managers in your NSM coded group; (iv) maintain fifteen

(15) or more active personal customers as of the last day of the month for which the Bonus Pool is payable; and (v) be approved by FHTM. The position may also be appointed by the Executive Staff of FHTM. Appointees will have demonstrated leadership skills deemed necessary to represent FHTM as a Presidential Ambassador.

**F. Personal Sponsorship-Monthly Maximum:** FHTM believes that its Marketing and Compensation Plan is the best there is in the industry. In order to ensure that every new Manager has the best possible opportunity to build a successful and long-term business, FHTM believes that it is imperative for sponsoring IRs to work closely with all of their personally enrolled Managers until those new Managers are trained and are capable of fully and adequately presenting the FHTM business plan to others on their own. As such, IRs may personally sponsor a maximum of six (6) new Managers per calendar month. This limit on sponsorship serves to ensure that the sponsoring IR's time and energy are not spread thin among too many new Managers, thereby permitting the sponsoring IR to devote the necessary time to each new Manager that it takes to assist that new Manager in getting his/her business off to a Quick Start. This in turn leads to the building of a stronger, long-term business for all, both upline and downline.

## 5. FHTM FIELD TRAINING & COMPENSATION

**A. Trainer Coach (TC):** The Trainer Coach (TC) position is a separate business and an opportunity to earn additional income. A Trainer Coach can be an IR but it is not required. Trainer Coaches train Managers that have purchased the Optional Special Services Program. The Trainer Coach is paid a one-time \$40.00 fee for the initial training of a new Manager. Managers are encouraged to attend and audit additional training sessions as often as desired in order to reinforce the FHTM Policies and Procedures and business building techniques. TCs submit an invoice (Form #103) for payment for the initial training. Submission of this invoice to FHTM by the TC serves as certification to Fortune Hi-Tech Marketing, Inc., by both the TC and Manager, that this service was personally performed in accordance with Company approved methods by the TC submitting the invoice for payment.



# EXHIBIT B

---

**From:** Berridge, Kimberly [mailto:Kimberly.Berridge@dishnetwork.com]  
**Sent:** Friday, February 05, 2010 2:04 PM  
**To:** Ludwig, Alan  
**Subject:** Fortune Hi-Tech Marketing

Mr. Ludwig –

As we discussed in our telephone conversation On February 5, 2010, please be advised that Fortune Hi-Tech Marketing is not a partner of DISH Network L.L.C. However, Fortune Hi-Tech Marketing is a third party independent contractor that is authorized to sell DISH Network® service.

If you have any further questions, please do not hesitate to contact me.

Sincerely,  
Kimberly Berridge

Kimberly L. Berridge  
Paralegal  
DISH Network L.L.C.  
9601 S. Meridian Blvd.  
Englewood, CO 80112  
✉ [kimberly.berridge@dishnetwork.com](mailto:kimberly.berridge@dishnetwork.com)  
☎ (303) 723-2171 Direct  
☎ (720) 514-6351 Direct Fax

Mailing Address:  
P.O. Box 6655  
Englewood, CO 80155

ATTORNEY/CLIENT AND WORK PRODUCT PRIVILEGES MAY APPLY/  
DO NOT DISCLOSE WITHOUT THE PRIOR CONSENT OF GENERAL COUNSEL

# EXHIBIT C

---

**From:** Daniel\_Seal, Linda [mailto:Linda\_Daniel\_Seal@homedepot.com]  
**Sent:** Friday, February 05, 2010 2:29 PM  
**To:** Ludwig, Alan  
**Cc:** Daniel\_Seal, Linda  
**Subject:** Fortune Hi-Tech Marketing

Mr. Ludwig,

Pursuant to our discussion earlier today, this email is to confirm, to the best of my knowledge, that The Home Depot do not have a partnership or sales agreement with Fortune Hi-Tech Marketing. Please let me know if you need further assistance.

Thank you.

**Linda Daniel-Seal, Senior Attorney | Home Depot U.S.A., Inc. | Tel.: (770) 384.3914 | Fax: (770) 384.2739 | [Linda\\_Daniel\\_Seal@HomeDepot.com](mailto:Linda_Daniel_Seal@HomeDepot.com)**

**Store Associates:** Let Us Know How We Can Help - *Legal Store Support: SOP 09-08; Store Dedicated Phone: 770-433-8211 ext 18440; Store Dedicated Email: [legal\\_question@homedepot.com](mailto:legal_question@homedepot.com); & Store Dedicated FAX: 770-384-3041*  
Tell us how Legal is doing to support your needs. Visit [myApron > My Store > What's New > VOC @ the SSC](#)

**Confidentiality Notice:** This e-mail and any attachments originated from the Home Depot Legal Department and may contain information that is proprietary, privileged attorney-client communications or work product. If you are not the intended recipient, you are not authorized to read, retain, or distribute this e-mail. If you received this e-mail in error, please notify the sender immediately by e-mail and delete all copies of this e-mail.

---

The information in this Internet Email is confidential and may be legally privileged. It is intended solely for the addressee. Access to this Email by anyone else is unauthorized. If you are not the intended recipient, any disclosure, copying, distribution or any action taken or omitted to be taken in reliance on it, is prohibited and may be unlawful. When addressed to our clients any opinions or advice contained in this Email are subject to the terms and conditions expressed in any applicable governing The Home Depot terms of business or client engagement letter. The Home Depot disclaims all responsibility and liability for the accuracy and content of this attachment and for any damages or losses arising from any inaccuracies, errors, viruses, e.g., worms, trojan horses, etc., or other items of a destructive nature, which may be contained in this attachment and shall not be liable for direct, indirect, consequential or special damages in connection with this e-mail message or its attachment.

---

**The information contained in this e-mail and any attached documents may contain information that is confidential or otherwise protected from disclosure. If you are not the intended recipient of this message, or if this message has been sent to you in error, please immediately alert the sender by reply e-mail and then delete this message, including any attachments. Any dissemination, distribution or other use of the contents of this message by anyone other than the intended recipient is strictly prohibited.**

# EXHIBIT D

Scott Roberts  
Associate General Counsel  
3150 Sabre Drive  
Southlake, TX 76092  
682-605-1580  
scott.roberts@travelocity.com

RECEIVED  
STATE AUDITORS  
OFFICE  
HELENA, MONTANA

2010 FEB 19 A 9:46



www.travelocity.com

February 18, 2010

Alan Ludwig  
Securities Examiner  
Montana Securities Department  
840 Helena Ave.  
Helena, MT 59601

*Via Federal Express*

Dear Mr. Ludwig:

I am responding to your January 27, 2010 letter requesting that Travelocity inform the Montana Securities Department whether or not Hi-tech Marketing ("High Tech") "has partnered with Travelocity to sell Travelocity products and services."

Please be advised that Travelocity is not a partner, in the legal sense, of Hi-Tech Marketing. Rather, Travelocity has a contractual relationship with High-Tech, pursuant to which Travelocity's World Choice Travel division provides online travel information and booking services functionality for various web sites established by High-Tech and pays High-Tech a commission for travel booked using this booking engine. The provision of these technical solutions by Travelocity is unrelated to any multi-level marketing activities that High-Tech may be engaged in; what we do is akin to the phone company that provides telephones and telephone services to High-Tech.

If you have any additional questions, please feel free to contact me at 682-605-1580.

Very Truly Yours,

Scott Roberts  
Associate General Counsel

# EXHIBIT E



STATE AUDITORS  
OFFICE  
HELENA, MONTANA

2010 FEB -4 A 10:42

## GE Security

Christopher P. Moore  
Senior Counsel

12345 SW Leveton Drive  
Tualatin, OR 97062  
USA

T 503 885 5756  
Christopher.moore@ge.com

January 29, 2010

Mr. Alan Ludwig  
Securities Examiner  
Montana Securities Department  
840 Helena Avenue  
Helena, MT 59601

Re: Fortune Hi Tech Marketing

Dear Alan:

As we discussed in our telephone conversation today, Fortune Hi-Tech Marketing does not have a direct relationship with GE Security, Inc. or GE. We understand Fortune purchases GE Security products from Protect America. Protect America is a GE Security authorized dealer.

Thank you for bringing the inappropriate use of the GE trademark to our attention. We will contact Fortune Hi-Tech Marketing and Protect America to address the issue.

Please call me if I can provide any further information.

Best regards,

Christopher P. Moore



# EXHIBIT F

February 24, 2010

RECEIVED  
STATE AUDITORS  
OFFICE  
HELENA, MONTANA

2010 FEB 25 A 9:53

Allen Ludwig  
840 Helena Ave  
Helena, MT 59601

I am Vonda Rader from Columbus, Mt. On Feb. 21, 2010 I paid Fortune Hi-Tech Marketing Inc. from Lexington KY. \$307.99 to buy product over the internet at a discount from National Companies. I got this discount because I was to recruit people, who in turn would recruit. I would receive a check for 100.00 for each recruit. I also needed to buy three (3) products - a web page to sell FHTM - \$19.99 one time fee - \$24.99 a month, ID? \$15.99 one time fee - \$15.99 a month internet security Simplicity, and a wireless connection to the internet. I chose Verizon \$49.99 one time fee - \$9.99 a month.

Next day I went to library internet to check his company. There are not any National companies on the web site. It appears to me they just want people to pay \$299.99 period.

I called the Lexington Better Business Bureau they gave this company a B-rating.

I have called the Company in Lexington KY and left my name and number. They have not called back.

as of today I still haven't received my internet connection.

I have paid this company \$484.95 total and not sure what I paid for.

Sincerely,

Vonda Rader

565 Shame Creek Rd.

Columbus, MT. 59019